

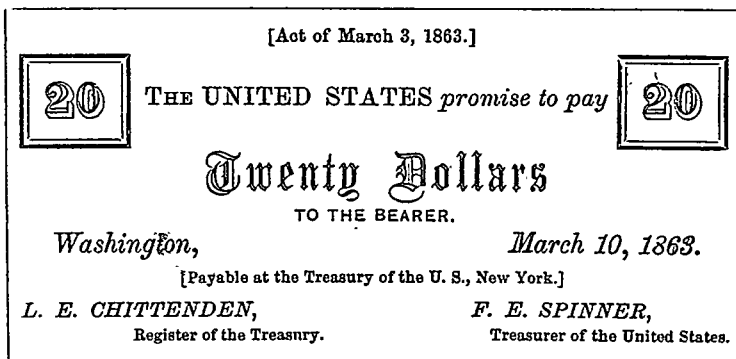
Statement of the case.

NOTE.—At the same time with the cases just disposed of was decided another, from the same court, involving the same question of the right to tax as they did, but differing from them in certain respects. It is here reported:

BANK v. SUPERVISORS.

1. United States notes issued under the Loan and Currency Acts of 1862 and 1863, intended to circulate as money, and actually constituting, with the National bank notes, the ordinary circulating medium of the country, are, moreover, obligations of the National government, and exempt from State taxation.
2. United States notes are engagements to pay dollars; and the dollars intended are coined dollars of the United States.

THIS case—brought here by the Bank of New York—differed from the preceding in two particulars: (1) That the board of supervisors, which in the other cases allowed and audited the claims of the banking associations, refused to allow the claim made in this case; and (2) That the exemption from State taxation claimed in this case, was of United States notes, declared by act of Congress to be a legal tender for all debts, public and private, except duties on imports and interest on the public debt, while in the other cases it was of certificates of indebtedness. These United States notes, as is sufficiently known at the present, had become part of the currency of the country. Their form (with certain necessary variations for different denominations, place of payment, &c.) was thus:



Argument in favor of the tax.

The mandamus in the State court was directed, in the case now before the court, to the board of supervisors, instead of to the officers authorized to issue bonds, as in the cases just preceding.

The judgment in the Court of Appeals sustained the action of the board refusing to allow the exemption set up, and the case was brought here by writ of error to that court.

Messrs. O'Connor and O'Gorman, in support of the judgment below:

1. The exemption of the public debt of the United States from taxation by State authority, rests only upon that clause of the Constitution which authorizes Congress "to borrow money on the credit of the United States."

2. The purpose and effect of the acts authorizing the notes in question was to create a new kind of money in the United States—paper money—which was to be a substitute for a metallic currency. The issuing of these notes was neither more nor less than the creation, by right or without it, of a conventional money. The notes were intended to be money, and in practice have become the *only lawful money* in use.

3. The government did not, really and in fact, contract by these notes to pay the bearer on demand or at any time. The notes were made by the act a legal tender in payment of *all* debts, including (with a small exemption) the government's own, and of course when presented for payment, similar notes being a legal tender in discharge of them, the debt would be discharged by a delivery of new notes of the same kind. The notes were promises to make other promises, to be renewed *ad infinitum*. There is really no debtor nor creditor in respect of them. There is no loan or evidence of loan.

As far as the credit of the United States was involved in the issue of these notes, no greater responsibility was assumed than is assumed by any government in coining or otherwise affixing a stamp to metal, and affixing to it a certain nominal value; although by mixing or debasing the metal, its *real* value, in use or exchange, may have been totally destroyed. The acts in question did but endeavor to confer a prescribed value on certain stamped paper, which they compelled the citizens of the United States to take in payment of all debts due, or to become

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due by the government to them, or by them to the government, or to one another.

By this means, instead of *borrowing money*, Congress made money, and rendered borrowing unnecessary.

The protection from State interference accorded by the Constitution to the exercise by the government of the power of borrowing cannot be invoked in such a case.

4. The acts of Congress relating to the financial operations of the government during the civil war, afford evidence that Congress did not intend that the notes in question should be exempt from State taxation.*

Messrs. Peckham and Burrill, contra.

The CHIEF JUSTICE delivered the opinion of the court.

The general question requiring consideration is whether United States notes come under another rule in respect of taxation than that which applies to certificates of indebtedness.

The issues of United States notes were authorized by three successive acts. The first was the act of February 25, 1862;† the second, the act of July 11, 1862;‡ and the third, that of March 3, 1863.§

Before either of these acts received the sanction of Congress the Secretary of the Treasury had been authorized by the act of July 17, 1861,|| to issue treasury notes not bearing interest, but payable on demand by the assistant treasurers at New York, Philadelphia, or Boston; and about three weeks later these notes, by the act of August 5, 1861,¶ had been made receivable generally for public dues. The amount of notes to be issued of this description was originally limited to fifty millions, but was afterwards, by the act of February 12, 1862,** increased to sixty millions.

These notes, made payable on demand, and receivable for all public dues, including duties on imports always payable in coin, were, practically, equivalent to coin; and all public disbursements, until after the date of the act last mentioned, were made in coin or these notes.

* See 12 Stat. at Large, 345, §§ 1, 2; Ib. 709; 13 Id. 218-19-21-22.

† 12 Stat. at Large, 345.

‡ Ib. 532.

§ Ib. 709.

|| Stat. at Large, 259, § 6.

¶ Ib. 818, § 5.

** Ib. 838.

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In December, 1861, the State banks (and no others then existed) suspended payment in coin; and it became necessary to provide by law for the use of State bank notes, or to authorize the issue of notes for circulation under the authority of the national government. The latter alternative was preferred, and in the necessity thus recognized originated the legislation providing at first for the emission of United States notes, and at a later period for the issue of the national bank currency.

Under the exigencies of the times it seems to have been thought inexpedient to attempt any provision for the redemption of the United States notes in coin. The law, therefore, directed that they should be made payable to bearer at the treasury of the United States, but did not provide for payment on demand. The period of payment was left to be determined by the public exigencies. In the meantime the notes were receivable in payment of all loans, and were, until after the close of our civil war, always practically convertible into bonds of the funded debt, bearing not less than five per cent. interest; payable in coin.

The act of February 25, 1862, provided for the issue of these notes to the amount of one hundred and fifty millions of dollars. The act of July 11, 1862, added another hundred and fifty millions of dollars to the circulation, reserving, however, fifty millions for the redemption of temporary loan, to be issued and used only when necessary for that purpose. Under the act of March 3, 1863, another issue of one hundred and fifty millions was authorized, making the whole amount authorized four hundred and fifty millions, and contemplating a permanent circulation, until resumption of payment in coin, of four hundred millions of dollars.

It is unnecessary here to go further into the history of these notes, or to examine their relation to the national bank currency. That history belongs to another place; and the quality of these notes, as legal tenders, belongs to another discussion. It has been thought proper only to advert to the legislation by which these notes were authorized, in order that their true character may be clearly perceived.

That these notes were issued under the authority of the United States, and as a means to ends entirely within the constitutional power of the government, was not seriously questioned upon the argument.

But it was insisted that they were issued as money; that their

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controlling quality was that of money, and that therefore they were subject to taxation in the same manner, and to the same extent, as coin issued under like authority.

And there is certainly much force in the argument. It is clear that these notes were intended to circulate as money, and, with the national bank notes, to constitute the credit currency of the country.

Nor is it easy to see that taxation of these notes, used as money, and held by individual owners, can control or embarrass the power of the government in issuing them for circulation, more than like taxation embarrasses its power in coining and issuing gold and silver money for circulation.

Apart from the quality of legal tender impressed upon them by acts of Congress, of which we now say nothing, their circulation as currency depends on the extent to which they are received in payment, on the quantity in circulation, and on the credit given to the promises they bear. In these respects they resemble the bank notes formerly issued as currency.

But, on the other hand, it is equally clear that these notes are obligations of the United States. Their name imports obligation. Every one of them expresses upon its face an engagement of the nation to pay to the bearer a certain sum. The dollar note is an engagement to pay a dollar, and the dollar intended is the coined dollar of the United States; a certain quantity in weight and fineness of gold or silver, authenticated as such by the stamp of the government. No other dollars had before been recognized by the legislation of the national government as lawful money.

Would, then, their usefulness and value as means to the exercise of the functions of government, be injuriously affected by State taxation?

It cannot be said, as we have already intimated, that the same inconveniences as would arise from the taxation of bonds and other interest-bearing obligations of the government, would attend the taxation of notes issued for circulation as money. But we cannot say that no embarrassment would arise from such taxation. And we think it clearly within the discretion of Congress to determine whether, in view of all the circumstances attending the issue of the notes, their usefulness, as a means of carrying on the government, would be enhanced by exemption from taxation; and within the constitutional power of Congress,

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having resolved the question of usefulness affirmatively, to provide by law for such exemption.

There remains, then, only this question, Has Congress exercised the power of exemption?

A careful examination of the acts under which they were issued, has left no doubt in our minds upon that point.

The act of February, 1862,* declares that "all United States bonds, and other securities of the United States, held by individuals, associations, or corporations, within the United States, shall be exempt from taxation by or under State authority."

We have already said that these notes are obligations. They bind the national faith. They are, therefore, strictly securities. They secure the payment stipulated to the holders, by the pledge of the national faith, the only ultimate security of all national obligations, whatever form they may assume.

And this provision is re-enacted in application to the second issue of United States notes by the act of July 11, 1862.†

And, as if to remove every possible doubt from the intention of Congress, the act of March 3, 1863,‡ which provides for the last issue of these notes, omits, in its exemption clause, the word "stocks," and substitutes for "other securities," the words "Treasury notes or United States notes issued under the provisions of this act."

It was insisted at the bar, that a measure of exemption in respect to the notes issued under this—different from that provided in the former acts, in respect to the notes authorized by them—was intended; but we cannot yield our assent to this view. The rule established in the last act is in no respect inconsistent with that previously established. It must be regarded, therefore, as explanatory. It makes specific what was before expressed in general terms.

Our conclusion is, that United States notes are exempt; and, at the time the New York statutes were enacted, were exempt from taxation by or under State authority. The judgment of the Court of Appeals must therefore be

REVERSED.

* 12 Stat. 346, § 2.

† Ib. 546.

‡ Ib. 709.